NO. 79767-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DESMOND MODICA,

Appellant.

STATE'S SUPPLEMENTAL BRIEF TO THE SUPREME COURT

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A.   ISSUES

1.   The Washington State Privacy Act ("Privacy Act") applies only where *private* communications or conversations are intercepted or recorded. A communication is private only where someone reasonably expects that this communication will be confidential. Here, posted signs advised the defendant, a jail inmate, that all calls were monitored and recorded. Additionally, a recorded message preceded each call, notifying both the defendant and the call's recipient that all calls were monitored and recorded. Finally, the call recipient had to press a button to proceed with the call after being informed that the call would be recorded. Did the Court of Appeals properly hold that the defendant did not have a reasonable expectation of privacy in his outgoing calls so that the communications were not private within the meaning of the Privacy Act?

2.   The Privacy Act permits the recording of private communications if all participants consent. If a person knows that a communication is being recorded and continues to converse, he is deemed to have consented to its recording. Here, the participants in the call, the defendant and his grandmother, knew that their conversations were being recorded and they nonetheless continued to converse. Did the Court of Appeals correctly find that they consented to the recordings?

3. RCW 9.73.095 grants broad surveillance powers to DOC concomitant with stringent compliance requirements. The statute does not apply to county jails or its employees. Modica's telephone calls were all recorded pursuant to the current standard operating procedures of the King County Jail, which are statutorily authorized by RCW 70.48.071. Should this Court hold that RCW 9.73.095—a statute applicable solely to employees of DOC—does not apply to King County jail employees?

B.   STATEMENT OF THE CASE

1.   PROCEDURE

The State charged the defendant, Desmond Modica, with assault in the second degree (DV), resisting arrest, assault in the fourth degree (DV), and tampering with a witness. CP 12-13.

Modica was convicted as charged by a King County Superior Court jury, the Honorable Christopher Washington presiding. CP 50-53. Judge Washington sentenced Modica to standard range sentences. CP 54-63.

On December 26, 2006, the Court of Appeals, Division I, affirmed Modica's convictions in a published opinion (136 Wn. App. 434, 149 P.3d 446). Modica filed a petition for review, alleging that the portions of the Court of Appeals' opinion that held that the Privacy Act did not apply to the King County Jail recordings of outbound inmate telephone calls, and

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that Modica and his grandmother consented to the recordings, conflicts

with State v. Wanrow[1] and State v. Faford.[2] On December 4, 2007, this

Court granted review.

2. STATEMENT OF FACTS

On May 18, 2005, Desmond Modica and Karen Modica, his wife

of 15 years, argued in their van as they drove through Seattle.[3]

9RP 94-95. During the argument, Modica punched Karen in the nose,

causing multiple nasal fractures. 9RP 28-31, 94-95. Additionally, Modica

pushed Karen down and twisted her right arm. 9RP 94-95.

At trial, Karen recanted the initial statement that she had given to

the police and blamed herself for the injuries. However, a Good

Samaritan who helped Karen testified consistently with Karen's initial

statement to the police. 9RP 67-71; 12RP 15-28. When officers tried to

arrest Modica, he violently struggled, kicking and punching at the officers,

as he broke free of their grasp. 10RP 49-57; 11RP 28-35; 12RP 57-61.

He was finally subdued and arrested.[4] 10RP 57.

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[1] State v. Wanrow, 88 Wn.2d 221, 559 P.2d 548 (1977).

[2] State v. Faford, 128 Wn.2d 476, 910 P.2d 447 (1996).

[3] Because the defendant and the victim have the same last name, the State will refer to Ms. Modica as Karen. No disrespect is intended.

[4] A full statement of the facts of the case with citations to the record is contained in the State's opening brief to the Court of Appeals.

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While incarcerated at the King County Jail, Modica repeatedly called his grandmother, Grace Stewart,[5] and asked her to assist him with his "plan." 12RP 73-75; Ex. 28-35 (call record logs from King County Jail, attached as Appendix A-1). The plan was for Stewart and other family members to make sure that Karen did not testify in court. Ex. 18-19, 22, 25-26 (recorded calls; index attached in Appendix A). Modica was quite certain that if his wife stayed away from court, the case would be over. Ex. 25, track 4, ~04:40. Because, as Modica explained to Stewart, the State could not compel her attendance through the issuance of a warrant: "They can't. By law, they can't...." Ex. 18, track 2, ~02:47-03:36. These calls were recorded.

The King County Jail installed its current telephone system specifically to allow the jail's special investigations unit to monitor all outgoing (non-attorney) inmate telephone calls "for safety and security purposes." 7RP 69; 12RP 84, 86. In addition to posted signs that warn inmates that all telephone calls are recorded, every call begins with a pre-recorded message, which is heard by both the inmate and the call's recipient, warning that the call will be recorded. 7RP 69; 12RP 90-91; 13RP 36; Ex. 18-19, 22, 25-26. Each call begins:

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[5] Ms. Stewart testified under the State's grant of immunity. 12RP 80.

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> Hello, this is a collect call from . . . [name of inmate as
> given by inmate] an inmate at King County Detention
> Facility. This call **will be recorded** and subject to
> monitoring at any time. To accept the charges dial three, to
> decline the charges dial nine or hang up now. Thank you
> for using Public Communication Services. You may begin
> speaking now.

4RP 14. The call cannot continue until after the recorded message plays

and the call's recipient dials or presses "three." 12RP 84, 90-91.

More than once during the pre-trial hearings Modica

acknowledged that he knew the jail recorded his telephone calls. See, e.g.,

6RP 68-69 ("My conversation with everybody is recorded...."); 7RP 70

("The jail phones are monitored" and "[the calls] are taped and once you

say you agree to that and push the button and say, yes, you are being

monitored, you can be taped.").

Likewise, Modica's co-conspirator, his grandmother Grace

Stewart, acknowledged that she knew that the jail recorded each collect

telephone call that Modica placed to her and for which she would have to

press a button (the number three) to accept the charges. 12RP 77-78 (trial

testimony). Yet, despite actually knowing that the jail recorded each

outgoing call, time and again Modica used the jail telephones and

conspired with Stewart in his attempts to tamper with Karen Modica:

> "Tell her don't do nothing until I get this letter out today ...
> **she ain't even got to show up**. Just tell her just to lay

back.... She ain't gotta say nothing. Just tell her to take the Fifth." Ex. 22, track 11, at ~01:19-02:16.

"I'm just trying to get them to drop the whole case....**As long as the other person knows to do the same thing--to stay away.**" Ex. 25, track 1, at ~08:46-09.

[Stewart] "If she don't come, what'll happen?"
[Modica] "It's over....**It's best if that person stays completely away.**" Ex. 25, track 4, at ~04:40-04:49.[6]

Despite Modica's and Stewart's best efforts, Karen was arrested on a material witness warrant and appeared at trial.

C.   ARGUMENT

Modica contends that the conversations with his grandmother were private both because of his subjective intent and the lack of consent to the recordings thereof. Specifically, Modica claims that the Court of Appeals erred by holding that any expectation of privacy held by Modica could not have been reasonable because he was on notice that the jail recorded each call. Modica argues that notice is not tantamount to consent and that announcing that the call is being recorded does not cure the "illegality" of the recording itself.

Modica is wrong on both points. First, Modica had actual notice that his calls were subject to monitoring and would be recorded. It is simply illogical to acknowledge that he knew the jail was recording each of his calls, but to maintain that he expected the calls to be "confidential."

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[6] Please refer to Appendix A for an index to the recorded calls.

Because the calls were not private within the meaning of the Privacy Act, consent was not required, so there was no "illegality" to cure.

Second, assuming, arguendo, that the calls were private, the participants were clearly advised that would be monitored, yet they continued to speak. Thus, they consented to the recordings.

1. MODICA'S TELEPHONE CALLS WERE NOT "PRIVATE COMMUNICATIONS" WITHIN THE MEANING OF THE PRIVACY ACT.

Washington courts have consistently recognized that "the protections of the Privacy Act apply only to *private* communications or conversations."[7] State v. Clark, 129 Wn.2d 211, 224, 916 P.2d 384 (1996); Kadoranian by Peach v. Bellingham Police Dept., 119 Wn.2d 178, 189, 829 P.2d 1061 (1992) (Privacy Act protects only private communications). To the extent recordings do not involve private communications they are properly admitted into evidence. Clark, 129 Wn.2d at 224.

This Court has adopted the WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1969) definition of "private" as "belonging to one's self ... secret ... intended only for the persons involved (a conversation) ... holding a confidential relationship to something ... a secret message: a private communication ... secretly: not open or in public." Lewis v. Dep't

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[7] RCW 9.73.030(1)(a), (b) is attached as Appendix B.

of Licensing, 157 Wn.2d 446, 458, 139 P.3d 1078 (2006); State v. Christensen, 153 Wn.2d 186, 193, 102 P.3d 789 (2004). A communication is private (a) when parties manifest a subjective intention that it be private and (b) where that expectation is reasonable. State v. Townsend, 147 Wn.2d 666, 673, 57 P.3d 255 (2002). The reasonable expectation standard calls for a case-by-case consideration of all of the surrounding facts. State v. Faford, 128 Wn.2d 476, 484, 910 P.2d 447 (1996):

> We have primarily focused on the subjective expectations of the parties to the conversation; was the information conveyed in the disputed conversations intended to remain confidential between the parties?

Faford, 128 Wn.2d at 484 (citing Kadoranian, 119 Wn.2d at 190). Whether a particular communication is private and thus protected by the Privacy Act is a question of fact. Kadoranian, at 190.

Although a court considers the subjective intentions of the parties, the inquiry does not stop there because any defendant will contend that his conversation was intended to be private. Clark, 129 Wn.2d at 225. Thus, additional considerations are the duration and subject matter of the conversation, the location and presence or potential presence of a third party, and the role of the nonconsenting party and his or her relationship to the consenting party. Id. at 225-27. In general, the presence of a third

party during the conversation means that the matter is not secret or confidential. Id. at 226. The relevant time for assessing the reasonableness of the defendant's expectation is at the time of the communication, not at the time of his arrest or prosecution. Id. at 227.

At the time of the recorded communications at issue, Modica was an inmate at the King County Jail.[8] This Court has consistently held that inmates have a lower expectation of privacy while in custody. State v. Campbell, 103 Wn.2d 1, 23, 691 P.2d 929 (1984) ("An inmate's expectation of privacy is necessarily lowered while in custody"); State v. Rainford, 86 Wn. App. 431, 438, 936 P.2d 1210 (allowing dry-cell search of inmate), review denied, 133 Wn.2d 1019 (1997); State v. Baker, 28 Wn. App. 423, 424-25, 623 P.2d 1172 (1981) (allowing routine pat-down searches of prisoners even without articulable suspicion).[9] See also United States v. Van Poyck, 77 F.3d 285, 290-91 (9th Cir.) ("[N]o prisoner should reasonably expect privacy in his outbound telephone calls."), cert. denied, 519 U.S. 912 (1996).

Other Washington cases have held that a communication or conversation cannot be private when the inmate knows it is being

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[8] Cases cited by Modica in support of his suggestion that court approval was needed to record his calls (see Pet. for Rev. at 5) are inapt because in none of those cases was the recorded person in jail.

[9] Pretrial detainees and convicted inmates have the same privacy rights. Bell v. Wolfish, 441 U.S. 520, 546, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979).

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intercepted. See, e.g., State v. Jones, 95 Wn.2d 616, 627, 628 P.2d 472

(1981) (arrestee interrogation complied with statute when surrounding

circumstances demonstrated that arrestee knew recording was being

made); State v. Grove, 65 Wn.2d 525, 527, 398 P.2d 170 (1965) (inmate's

expectation that letter to wife was confidential and protected by privilege

fails to support suppression where inmate delivered unsealed letter to jail

guard knowing it would be censored).

Although Modica may have hoped nobody would actually monitor

or record his call, in light of the circumstances surrounding each telephone

call, any such hope did not constitute a reasonable expectation of

confidentiality. Indeed, the very nature of Modica's calls to Stewart—a

conspiracy to commit another crime—required Stewart to disclose their

communications with persons other than those involved in the

conversation. See State v. Forrester, 21 Wn. App. 855, 861-62, 587 P.2d

179 (1978) (defendant's extortionate demands not the type of statements a

person expects to remain confidential), review denied, 92 Wn.2d 1006

(1979). Consequently, Modica did not manifest a subjective intent that the

communications remain confidential because they necessarily required

disclosure to a third party. See Clark, 129 Wn.2d at 226. Modica argued

to the trial court that his calls *should* be considered private because he was

restricted by the King County Jail to having access to only phones

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provided by the facility. The court acknowledged Modica's concern, but stated that a defendant gives up certain rights when he is in jail and one of those rights is to have a personal conversation with no one listening. 7RP 71-72. See also Lewis 157 Wn.2d at 459-60 (rejecting the defendant's contention that an "involuntary" conversation is a private one and reiterating that the correct inquiry is whether the parties intend the conversation to be secret, in light of the Clark factors).

Clark presupposes a subjective expectation of a private communication before it is necessary for a court to analyze the Clark factors. Here, Modica cannot satisfy the threshold showing that he had a subjective expectation of privacy—Modica actually knew that his telephone conversations could be monitored and were being recorded. There are posted signs that advise inmates of this information. 7RP 69. The pre-recorded message that precedes each telephone call, and that is heard by both the inmate and the call recipient, expressly warns the participants that the call may be monitored and will be recorded. 4RP 14. Modica admitted that he knew the jail recorded his calls. 6RP 68-69; 7RP 70. He acknowledged during several of his conversations with Stewart that their conversations were being recorded. Modica, 136 Wn. App. at 449-50. Stewart testified that she, too, knew the conversations were monitored and recorded. 12RP 77-78.

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Modica's comparisons of the surreptitious interception of a

communication via radio scanner that occurred in Faford and the use of an

infrared thermal device to surreptitiously search the inside of a home in

Young[10] are inapt. In both of those cases, this Court was concerned with

surveillance where the target did not have even the slightest inkling that he

was being monitored. In both cases, this Court was concerned that the

rapid evolution of technology—which might outpace a citizen's

knowledge of surveillance capabilities—should not diminish the

reasonableness of citizens' expectations of privacy:

> We recognize as technology races ahead with ever
> increasing speed, our subjective expectations of privacy
> may be unconsciously altered. Our right to privacy may be
> eroded without our awareness, much less our consent. We
> believe our legal right to privacy should reflect thoughtful
> and purposeful choices rather than simply mirror the
> current state of the commercial technology industry.

Faford, 128 Wn.2d at 485 (quoting State v. Young, 123 Wn.2d 173, 184,

867 P.2d 593 (1994)).[11]

Here, Modica and Stewart knew that they were being recorded and

they purposefully chose to proceed anyway. There are no issues of

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[10] State v. Young, 123 Wn.2d 173, 867 P.2d 593 (1994).

[11] Modica attempts to compare the purely statutory provisions of the Privacy Act with constitutional privacy provisions of this and other states. Pet. for Rev. at 4. But this Court long ago rejected the argument that where one party consents, recording of private communications somehow implicates any federal or state constitutional provisions. See State v. Corliss, 1233 Wn.2d 656, 663-64, 870 P.2d 317 (1994); State v. Salinas, 119 Wn.2d 192, 197, 829 P.2d 1068 (1992).

technological surveillance in this case. Unlike the clandestine methods of surveillance at issue in <u>Faford</u> and <u>Young</u>, here the notice of intent to monitor and record was express and overt; there was no risk Modica's expectations could be unconsciously altered. Moreover, the calls were made from jail, where the omnipresence of jail personnel and other inmates distinguishes this case from the defendants in <u>Faford</u> and <u>Young</u>, who were in their residences.

Thus, the Court of Appeals correctly held that these calls from jail are not private communications because the participants are aware that the calls may be monitored or recorded. <u>Modica</u>, 136 Wn. App. at 448-49.

2. ALL PARTICIPANTS CONSENTED TO THE RECORDING.

As argued above, consent is irrelevant in this case. If the conversation was not private, there is no need for this Court to reach Modica's second argument. Assuming, arguendo, that this Court decides that the call was private, the Privacy Act was still not violated.

Modica asserts that notice does not equal consent. Modica is mistaken in three respects. First, the Privacy Act requires that all *participants* in the <u>private</u> communication consent. RCW 9.73.030(1)(a). Nothing in this subsection limits how consent is to be obtained. Here, Modica and Stewart, the two *participants* in the communication,

consented. Second, Modica erroneously relies on RCW 9.73.030(3) to

argue that it restricts methods of obtaining consent. It does not. It is but

one permissible method of obtaining consent. Finally, case law squarely

supports the Court of Appeals' holding that the participants' choice to

converse while knowing that their communications would be recorded is

tantamount to consent. Modica, 136 Wn. App. at 449-50.

RCW 9.73.030(1)(a) clearly permits interception and recording of

any conversation after "first obtaining the consent of all *participants* in the

communication." (Emphasis supplied.) Nothing in this subsection limits

how consent is to be obtained. And, it is clear from this Court's prior

decisions that consent of the participants can be inferred from the

circumstances. Townsend, 147 Wn.2d at 671-72 (defendant impliedly

consented to the recording of ICQ communications because he was given

notice); see also In re Marriage of Farr, 87 Wn. App. 177, 184, 940 P.2d

679 (1997) (party deemed to have consented to the recording of message

left on answering machine), review denied, 134 Wn.2d 1014 (1998).[12]

Still, Modica argues that RCW 9.73.030(3) restricts the methods of

obtaining consent. It is his failure to analyze implied consent that leads to

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[12] See also United States v. Horr, 963 F.2d 1124 (8th Cir. 1992) (jail inmate's choice to
use a jail telephone when he has actual knowledge that the communication may be
monitored or recorded impliedly consents to interception and/or recording of the
telephone call).

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his erroneous statement: "notice is not the same as consent." Pet. for Rev. at 7. Distilled to its essence, Modica's argument is that because the jail, which was not a "party" engaged in the communication or conversation, announced that the conversation would be recorded, the notice was insufficient. See RCW 9.73.030(3) (Appendix B). However, this argument ignores RCW 9.73.030(1)(a), Townsend, Farr, and elevates form over substance. The intent of RCW 9.73.030(3) is to ensure that all parties to a communication or conversation know that they are going to be recorded to avoid the type of surreptitious surveillance present in cases such as Faford. Thus, one party must notify another if the party intends to record. But if a third-party is recording, then RCW 9.73.030(1)(a) controls, and consent can be implied from the circumstances.

Moreover, Modica's argument directly conflicts with this Court's rationale in Townsend. In Townsend, the issue was whether real time internet chat conversations (ICQs) were properly admitted into evidence, and the question turned on whether Townsend was aware that the recipient could default the software to automatically record the messages received from Townsend. Townsend, 147 Wn.2d at 677. The software manual contained a "privacy policy" that specifically warned users that there was a risk that "Content Sensitive" material could become exposed to the general

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public and that if the user did not want that risk, he should not use the software. Id.

In distinguishing Townsend from Faford—in which this Court held that the warning label on the cordless telephone and/or in the owner's manual was inadequate to constitute a waiver of one's privacy expectations—this Court focused on the fact that, unlike the people surveilled in Faford, there was evidence that either Townsend had consented (by continuing with the ICQ knowing that it could be exposed to the general public) or had been advised that the ICQs might be recorded.[13] Id. at 678.

Significantly, Modica does not deny that both he and Stewart were provided clear information that their conversations were being recorded. Rather, Modica asserts: "There is not a **single** case ... that says that a mere statement that the recording is occurring, by a non-party, is sufficient to establish consent to record telephone conversations." Pet. for Rev. at 8. First, this is a straw-man argument. Here, you have a printed sign warning that the call will be recorded, both participants to the call acknowledged that they knew it would be recorded, and then Stewart took the affirmative

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[13] In Townsend, this Court observed that the ICQ manual advised Townsend of his inherent risk that his ICQ communication could be made public and that Townsend's familiarity with this policy could be inferred. Townsend, 147 Wn.2d at 677-79. Here, it is unnecessary to draw any inference because the record is replete with Modica's acknowledgements that all inmate telephone calls were recorded by the jail.

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step of pushing a button and continuing with the call. Second, Modica is

mistaken that there is no case on point. United States v. Roy, 349 F. Supp.

2d 60 (D. Mass. 2003).[14]

United States v. Roy is illustrative. The facts in Roy are almost

identical to the facts here. Roy was indicted for eight crimes, including

witness tampering. Id. at 61. While Roy was incarcerated, the prison

recorded several of his outgoing telephone conversations, each of which

contained a recorded message almost identical to the message that

preceded each of Modica's calls. See id. Roy argued that consent could

not be inferred from notice.[15] The court held that the recorded warning

that preceded each call informed Roy about the scope of the interception.

Roy, at 63. Thus, the court held that by proceeding with the

conversations, Roy impliedly consented to the recordings. Id.

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[14] Numerous other courts across the Nation have concluded that recordings made under circumstances such as this case are made with consent of the parties. Consent need not be explicit, but can be implied from the circumstances. Van Poyck, supra at 292. Here, Modica chose to use the jail telephone knowing that his conversation would be recorded. This consent is valid even if the inmate was never told that use of the telephone system constituted consent to be recorded or that the jail could use the recording(s) as incriminating evidence. United States v. Workman, 80 F.3d 688, 694 (2nd Cir.), cert. denied, 519 U.S. 938, and cert. denied, 519 U.S. 955 (1996). Modica explicitly acknowledged that his calls were being recorded. 6RP 68-69; 7RP 70. Such explicit statements demonstrate actual notice and consent. United States v. Faulkner, 323 F. Supp 2d. 1111, 1117 (D. Kansas 2004).

[15] Just as the consent exception under Title III encompasses implied consent, Roy, at 63 (citations omitted), so does the consent exception under the Privacy Act. See Townsend, 147 Wn.2d at 666; RCW 9.73.030(1)(a).

The scope of the interception in this case could not have been clearer. Modica nevertheless continued with his conversations. As a result, he impliedly consented to the recordings thereof. See id.; Modica, 136 Wn. App. 449-50. Moreover, Stewart expressly consented to the call and recording by dialing or pressing "3," a point conceded by Modica. Thus, based on Modica's implied consent and Stewart's express consent, the recordings are admissible under the Privacy Act. Modica, 136 Wn. App. 449-50; Roy, 349 F. Supp. at 63.

The Court of Appeals properly held that, because both Modica and his grandmother knew that their conversations were being recorded, but nevertheless chose to converse, they each consented to the recordings. Modica, 136 Wn. App. at 449-50.

3.   RCW 9.73.095 DOES NOT APPLY TO JAILS.

RCW 9.73.095 applies to prisons; it does not apply to jails. By the plain language of the statute, it creates a blanket exemption from the provisions of RCW 9.73.030 - .080 that permits DOC to record all sorts of conversations and communications anywhere on the prison grounds. In exchange for this blanket exception, it establishes certain procedures that DOC must follow in making those recordings. RCW 9.73.095 (Attached as Appendix C). Thus, DOC need not comply with the detailed

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requirements of RCW 9.73.030 - .080, but it must meet special

requirements set forth in subsection .095.[16]

This is quite similar to the statutory scheme reviewed by this Court

in Lewis, 157 Wn.2d at 463-64 (interpreting RCW 9.73.090). Lewis

involved a blanket statutory exemption to the privacy act pertaining to

video and audio recording devices mounted on police cars.[17] However,

the blanket exemption also created some special statutory obligations,

which this Court held must be complied with before a recording could be

used as evidence. Lewis, at 465-67. In other words, when an agency

obtains the benefit of the exception, it must meet the obligations of the

statute, too. But RCW 9.73.095 neither excepts jails from the privacy act,

nor imposes special obligations on jails. In fact, it does not apply to jails

at all, so it is irrelevant to the recordings at issue here.[18]

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[16] When a statute's language is plain, this Court cannot "add words or clauses to an unambiguous statute when the legislature has chosen not to include that language," State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The plain language of RCW 9.73.095 is clear. It does not encompass jails.

[17] In Lewis, this Court reaffirmed that traffic stop conversations are not private for purposes of the Privacy Act. Lewis, at 460.

[18] RCW 70.48.071 grants jails authority to establish standard operating procedures, including setting up security measures. See RCW 70.48.071 (attached as Appendix D); 7RP 69; 12RP 84, 86 (King County Jail implemented its current telephone system for security purposes). See also United States v. Hearst, 563 F.2d 1331, 1345-46 (C.A.Cal. 1977) (monitoring and recording inmate telephone calls a valid security practice), cert. denied, 435 U.S. 1000 (1978). This statute permits jails to establish general protocols. Here, the jail was not undertaking the type of all-inclusive surveillance authorized to DOC under RCW 9.73.095. Rather, per standard operating procedure, the jail announced in writing and in a recorded warning that it monitored all inmate telephone calls.

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Modica claims that the Court of Appeals' decision conflicts with this Court's decision in <u>Wanrow</u>, which held that calls to emergency personnel could be recorded for "the purpose and only for the purpose of verifying the accuracy of reception of emergency calls." <u>State v. Wanrow</u>, 88 Wn.2d 221, 232-33, 551 P.2d 548 (1977) (interpreting former RCW 9.73.090(1)), <u>superseded</u> <u>by</u> <u>statute</u>, LAWS OF 1977, 1ST EX. SESS., CH. 363, § 3. Thus, Modica argues that <u>Wanrow</u> requires that unless a specific statutory provision exists that exempts King County Jail employees, his conversations must be presumed private and any recording thereof violative of the Privacy Act. Pet. for Rev. at 13-14.

This argument is nearly identical to an argument this Court rejected in <u>Lewis</u>. The defendants in <u>Lewis</u> argued that because RCW 9.73.090 (1)(c) does not expressly state whether it creates an exemption only for private conversations that could not otherwise be recorded under the Privacy Act or whether it also applies to private conversations, the proviso in subsection .090 implied that traffic conversations are usually private, but when accompanied by appropriate warnings, recording the conversation does not violate the Privacy Act. <u>Lewis</u>, at 461, 463. This Court rejected that argument, pointing out that the decision in <u>Wanrow</u> turned on the language of the former RCW 9.73.090—"for the purpose and only the purpose of"—acted to limit the exemption from the privacy

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act to calls to police stations under very particular circumstances. On the

other hand, the statute at issue in Lewis (the present version of RCW

9.73.090) created a "blanket exemption." Lewis, at 464.[19]

Similarly, RCW 9.73.095 creates a blanket exemption for DOC

employees, and imposes separate obligations on those employees. The

fact that county jail employees are not included in subsection .095 does

not demonstrate that the legislature considered all county jail inmate

telephone calls "private communications" within the meaning of the

privacy statute. See Lewis, at 464. Such a conclusion does not follow

from Wanrow. Moreover, it is unwarranted to conclude that the

legislature has, by implication, concluded that all jail calls are private,

when this Court's numerous decisions clearly establish that whether a

conversation is private is a case-by-case determination. The legislature is

presumed aware of this Court's decisions, and would not so radically alter

the analysis in such an oblique way.

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[19] Modica's reliance on the "Bill Request" (attached as Appendix B to his opening brief) is meaningless. This "bill request" was never even proposed in the legislature so it is impossible to assess the reasons it was never enacted. See In re Personal Restraint of Andress, 147 Wn.2d 602, 611-12, 56 P.3d 981 (2002) (the principle that this Court declines to speculate on why the legislature did not amend a particular bill applies with "added force" when the legislature fails to enact a draft provision), superseded by statute, LAWS OF 2003, CH. 3, SEC. 2. The principle should have even more force where, as here, no bill was even presented in a legislative committee, much less to the full legislature.

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D. CONCLUSION

This Court should affirm the Court of Appeals and hold that an inmate's conversation on a jail telephone is not "private" within the meaning of the Privacy Act. Moreover, by choosing to converse, knowing that the conversation may be monitored and will be recorded, the participants consent to the recording. Finally, because the Privacy Act does not apply, there does not need to be statutory provision exempting county jail employees, who act under the authority granted by RCW 70.48.071.

DATED this _7_ day of January, 2008.

Respectfully submitted,

DANIEL T. SATTERBERG
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APPENDIX A

APPENDIX A

INDEX TO <u>RELEVANT</u> JAIL CALLS

Exhibits 18-26:   Compact disks of Modica's telephone calls. Admitted as exhibits at 12RP 99.

Exhibits 28-35:   Call Records (Log of all outgoing calls made by Modica). For a detailed explanation of how logs are comprised, please see 12RP 101-03. The logs were admitted as exhibits at 12RP 100 (Appendix A-1).

Exhibit 18:   <u>Call one</u> is on 7/19/05 at 19:01:16. 12RP 105; Ex. 34 (line 6). Played for the jury at 12RP 109.

<u>Summary</u>:
Modica discussed with Stewart the importance of Karen not showing up for an interview with the prosecutor. Modica stated that, "[i]f [Karen] doesn't show up, all charges are dropped." Modica continued, "[I]f that person shows up, it [the prosecution] continues." Stewart told Modica that Karen told her that she had no where to go and Modica insisted that Stewart call Karen again and tell her that she has to go.

<u>Call two</u> is on 7/19/05 at 19:14:03. 12RP 105; Ex. 35 (line 7). Played for the jury at 12RP 109.

<u>Summary</u>*[1]:
2:47 - 3:03: Modica told Stewart that [the State] showed up to serve Karen because it needs her: "That's all they got."

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[1] Times reflect approximate time into the conversation. Although not all calls have been referenced as to when the jury heard them, exhibits 18-26 were admitted in their entirety 12RP 99.

3:21 Modica explained to Stewart, "Listen if they wanted to put a warrant out for her arrest, they would have already done it. They can't. By law they can't."

3:36-3:49 Modica claimed that if the State does not have Karen, "[t]hey don't have a case." Stewart agreed to tell Karen.

4:08-5:00 Modica emphasized that Karen cannot be home when the State tries to serve her with a subpoena because, without her, the State cannot proceed.

Call three is on 7/19/05 at 20:38:39. 13RP 7-8; Ex. 35 (line 8). Played for the jury at 13RP 7.

Summary:
00:23: Stewart told Modica, "Everything's ok." Modica asked if Stewart reached "that party [Karen]?" 00:35: Stewart confirmed that she spoke with Karen and that Karen said everything would be O.K. 00:49: Stewart confirmed that Karen could not be home the next day so that the State could not serve her with a subpoena. 00:57: Stewart told Modica that Karen said that she would do whatever Modica said. 1:10: Modica said that the State "[c]an't take me to trial without [Karen]." He told Stewart to call Karen and tell her to get out of there [the house] and not to return until he calls back.

Call four is on 7/20/05 at 12:12:57. 13RP 8; Ex. 35 (line 23). Played for the jury at 13RP 8-9.

Summary:
Stewart assured Modica that Karen understood that she could not be at the residence that afternoon when the prosecutor was expected. Modica said it is "[b]etter that person stays away." Stewart told Modica to stop talking about it because Karen was not going to be there and that he had nothing to worry about. Stewart agreed to have Karen call

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Modica at jail; Modica advised Stewart that when
Karen called, "She just ain't gotta say no name . . .
or if she wants to she can say she's just somebody
else."

Call six is on 7/20/05 at 12:58:25. 13RP 8; Ex. 35 (line 28).
Played for the jury at 13RP 8-9. .

Summary:
Stewart told Modica that Karen is going to stay
home, but that she is not going to answer the
telephone or the door. Stewart told Modica that she
cannot keep calling Karen and telling her the same
thing. Stewart assured Modica that the State does
not have Karen's telephone number. Modica
expressed concern that the State might send
someone to Karen's house. Stewart assured him,
"[t]here ain't no problems cause everybody's alert."
Stewart reassured Modica that Karen would not
show up for court the following day.

Exhibit 19   Call one is on 6/12/05 at 15:13:14; Ex. 30 (line 5).

Summary:
08:57 Stewart stated, "**They recording everything
you saying, you know...**" Modica responded,
"That good." 11:10: Modica continued, "But I ain't
said nothing, so if they want to reach her tell her she
ain't even got to open her mouth." 13:40 - 13:47:
"And if you get a chance, tell [Tommie][2] to run by
the house and tell Karen to keep her mouth shut."

Exhibit 22   Call three is on 6/9/05 at 15:03:02. 13RP 33; Ex. 29
                    (line 29).   Played for the jury at 13RP 33.

Summary:
2:40: Modica asked Stewart whether she talked to
Karen.

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[2] Tommie is Modica's father. 6RP 20.

5:02: Modica stated that if "[e]verything goes according to plan, all this'll be over, you know? Real quick."

Call six is on 6/11/05 at 13:01:34. 13RP 33; Ex. 29 (line 30). Played for the jury at 13RP 33.

Summary:
2:14: Modica told Stewart that Tommie needs to call Karen because the State can subpoena the phone records (and there is a no-contact order in place). 2:23: Modica stated that Karen needs to "stay[ ] out of the way 'til this over. You see what I'm saying? Now then they'll be trying to look for something and they ain't got nothing."

Call eleven is on 6/13/05 at 13:43:40. 13RP 52-53; Ex. 30 (line 15). Played for the jury at 13RP 52-53.

Summary:
00:28: Stewart assured Modica that "[e]verything is O.K." 1:19: Modica told Stewart to tell Karen, "[S]he ain't just got to say nothing. That's all....She ain't even got to show up. Just tell her just to lay back." Stewart stated that Karen said, "Everything's O.K." 1:31: Modica told Stewart, "Just tell [Karen] don't say nothing." 2:04: Modica stated, "[Karen] ain't gotta say nothing. Just tell her to take the Fifth." 3:22: Modica said, "I hope they'll do this, do this getting the story right and everything." Stewart responded, "You know she'll do the right thing."

Exhibit 25   Call one is on 7/5/05 at 15:07:23. 13RP 11-12; Ex. 32 (line13). Played for the jury at 13RP 11-12.

Summary:
8:46: Modica said, "I'm just trying to get them to drop the whole case." 9:27: Modica confirmed that his next court date was Friday. 9:31: Modica told

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Stewart "So as long as the other person [Karen] knows to do the same thing. To stay away. That person stays away completely from now on."

Call two is on 7/7/05 at 13:39:14. 13RP 14; Ex. 32 (line16). Played for the jury at 13RP 14.

Summary:
1:26: Modica told Stewart, "[I]t's best to stay away right now. Always. Always. From here on out."
1:40: Modica repeated that Karen needed to stay away "[f]rom here on out."

Call four is on 7/10/05 at 9:38:06. 13RP 14; Ex. 32 (line 25). Played for the jury at 13RP 14.

Summary:
3:50 - 4:10: Modica and Stewart discussed whether the State would issue a subpoena for Karen to show up for trial. 4:40: Stewart asked, "If she don't come, what happens?" 4:42: Modica responded, "It's over." 4:47: Modica emphasized, "That person, it's best if that person stays completely away." 4:49: Stewart asked, "Stay away?" Modica answered, "Oh yeah. Stay completely away." 4:54: Modica told Stewart, "That's why I want to talk about certain things that are transpiring. **Don't want to talk about you know too much over the phone.** But that's the main thing.

Call six is on 7/12/05 at 15:13:38. 13RP 15; Ex. 33 (line 1). Played for the jury at 13RP 15.

Summary:
4:12: Modica reminded Stewart, "Remember that individual [Karen] is to stay completely away, O.K.? Because they don't have nothin'. They don't even have statements of the other people, O.K?" 4:22:

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Modica repeated, "They don't have absolutely nothing."

Exhibit 26   <u>Call seven</u> is on 7/17/05 at 12:15:15. 13RP 16; Ex. 33 (line 18). Played for the jury at 13RP 16.

<u>Summary</u>:
00:20 - 00:43: Stewart confirmed that Karen received a trial subpoena but that it did not state a time at which she was to report to court. 1:06: Stewart asked Modica whether he wanted to call Karen. 1:09: Modica responded. "No, but I want that person to uh to not be there." 1:17: Stewart told Modica that Tommie (Modica's father) stressed to Karen the importance of her not showing to court, "[H]e called her and so she said O.K." 1:52: Modica asked Stewart whether Karen could stay at Stewart's house in lieu of appearing for trial. 1:57: Stewart responded, "That's O.K." 2:00 - 2:16: Modica told Stewart that the kids would also have to stay at her house. 3:48: Stewart told Modica that she would call Karen "[r]ight back ... she's on pins and needles ... because she wants to know what's going on...."

APPENDIX A-1

Call Records - 3.3

Start Date=04/01/2005
End Date=ANY
Inmate ID=ANY
ANI=2063284413

Billing Type =ANY
Call Type =ANY
System ID=ANY
Station Name=ANY

Trunk Name=ANY
Recording Type =ANY

Inmate ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
	05/21/2005 9:16:16	COMPLETED	COLLECT	13.62	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	05/22/2005 8:04:21	COMPLETED	COLLECT	12.35	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	05/23/2005 8:05:10	COMPLETED	COLLECT	14.03	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	05/23/2005 12:35:47	COMPLETED	COLLECT	4.55	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
	05/23/2005 12:59:43	COMPLETED	COLLECT	9.03	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	05/24/2005 8:01:25	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	05/24/2005 8:28:15	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	05/24/2005 10:16:26	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	05/24/2005 12:02:12	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-07-KCW06
	05/24/2005 12:18:01	COMPLETED	COLLECT	14.30	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-16-KCW05
	05/24/2005 15:06:38	COMPLETED	COLLECT	4.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-06-KCW06
	05/25/2005 12:06:33	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-08-KCW06
	05/25/2005 12:14:19	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-11-KCW05
	05/25/2005 12:47:15	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	05/25/2005 12:51:25	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	05/25/2005 13:00:46	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	05/25/2005 13:09:52	SILENCE DETECT	COLLECT	3.98	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-12-KCW06
	05/25/2005 13:14:05	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-20-KCW06
	05/25/2005 13:16:12	COMPLETED	COLLECT	3.62	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
	05/25/2005 13:29:29	COMPLETED	COLLECT	3.47	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	05/28/2005 15:08:36	COMPLETED	COLLECT	9.60	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	05/27/2005 12:12:57	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	05/27/2005 12:26:57	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-06-KCW06
	05/27/2005 13:01:00	COMPLETED	COLLECT	13.43	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
	05/31/2005 9:27:39	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	05/31/2005 12:59:49	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	05/31/2005 13:54:54	COMPLETED	COLLECT	2.52	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/01/2005 12:02:31	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-12-KCW06

Ex 28

Ex29

Inmate ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
	06/01/2005 15:19:31	COMPLETED	COLLECT	7.77	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	06/01/2005 15:40:16	COMPLETED	COLLECT	4.12	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-04-KCW06
	06/02/2005 12:04:42	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-15-KCW05
	06/02/2005 15:06:01	COMPLETED	COLLECT	11.45	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/02/2005 15:25:48	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	06/02/2005 15:28:49	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	06/02/2005 15:35:05	COMPLETED	COLLECT	7.73	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	06/03/2005 10:06:09	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/03/2005 10:17:01	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/03/2005 12:39:14	COMPLETED	COLLECT	7.08	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/03/2005 15:03:41	COMPLETED	COLLECT	8.43	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/05/2005 9:14:35	COMPLETED	COLLECT	7.55	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	06/06/2005 12:56:17	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	06/06/2005 12:58:27	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-11-KCW05
	06/06/2005 13:10:28	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/06/2005 13:11:31	COMPLETED	COLLECT	6.52	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/07/2005 13:00:50	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
	06/07/2005 13:23:18	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	06/07/2005 13:49:27	COMPLETED	COLLECT	12.02	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/08/2005 12:03:46	NO ANSWER	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	06/08/2005 12:09:23	COMPLETED	COLLECT	3.85	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-18-KCW05
	06/08/2005 15:42:02	COMPLETED	COLLECT	4.27	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/09/2005 13:36:17	COMPLETED	COLLECT	2.65	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/09/2005 15:00:39	REFUSED	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
Ex22, Call 3	06/10/2005 15:03:02	COMPLETED	COLLECT	5.23	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
Ex22 call 6	06/11/2005 13:26:26	COMPLETED	COLLECT	4.70	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/10/2005 13:37:54	COMPLETED	COLLECT	1.35	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/10/2005 13:41:49	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	06/10/2005 15:03:03	COMPLETED	COLLECT	6.12	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	06/11/2005 13:01:34	COMPLETED	COLLECT	7.05	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	06/11/2005 13:16:29	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-14-KCW05
	06/11/2005 13:23:36	COMPLETED	COLLECT	6.27	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05

Ex 30

Inmate ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
	06/12/2005 9:52:58	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/12/2005 9:55:26	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/12/2005 10:03:36	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/12/2005 10:15:06	COMPLETED	COLLECT	1.40	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/12/2005 15:13:14	COMPLETED	COLLECT	13.05	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-13-KCW05
	06/13/2005 9:01:08	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	06/13/2005 9:13:31	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/13/2005 9:40:08	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-06-KCW05
	06/13/2005 9:56:00	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/13/2005 12:03:20	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-20-KCW05
	06/13/2005 12:46:10	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-13-KCW05
	06/13/2005 12:52:52	COMPLETED	COLLECT	10.02	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-12-KCW05
	06/13/2005 13:12:20	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
Ex 22	06/13/2005 13:41:13	REFUSED	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
CALL 11	06/13/2005 13:43:40	COMPLETED	COLLECT	4.45	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/14/2005 13:00:31	COMPLETED	COLLECT	6.17	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/15/2005 12:22:02	COMPLETED	COLLECT	3.67	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/15/2005 13:28:40	COMPLETED	COLLECT	1.97	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/15/2005 15:44:01	COMPLETED	COLLECT	4.07	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-17-KCW05
	06/16/2005 12:01:20	COMPLETED	COLLECT	2.13	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
	06/16/2005 13:34:07	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/16/2005 13:37:24	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/16/2005 13:45:43	COMPLETED	COLLECT	4.43	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-08-KCW05
	06/17/2005 13:19:57	COMPLETED	COLLECT	15.80	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-08-KCW05
	06/17/2005 15:12:23	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-06-KCW05
	06/17/2005 15:14:26	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	06/17/2005 15:17:36	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-08-KCW05
	06/18/2005 12:02:44	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	06/18/2005 12:04:11	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	06/19/2005 8:49:09	COMPLETED	COLLECT	10.87	0	2063284413	KCW06	RJC-H4-KCW06	Trunk-08-KCW06
	06/21/2005 15:05:46	COMPLETED	COLLECT	6.05	0	2063284413	KCW05	RJC-H7-KCW05	Trunk-07-KCW05
	06/21/2005 15:13:05	COMPLETED	COLLECT	1.78	0	2063284413	KCW05	RJC-H7-KCW05	Trunk-04-KCW05

07/26/2005 11:28:36

Report=Rpt_Call_Records

Inmate ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
	06/22/2005 12:41:54	COMPLETED	COLLECT	14.13	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	06/23/2005 14:58:12	SILENCE DETECT	COLLECT	3.20	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/23/2005 15:01:41	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/23/2005 15:03:31	COMPLETED	COLLECT	2.95	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/24/2005 9:52:41	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/24/2005 13:10:33	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-08-KCW05
	06/24/2005 13:10:42	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-07-KCW06
	06/24/2005 13:15:34	COMPLETED	COLLECT	8.48	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-15-KCW05
	06/24/2005 19:23:26	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-16-KCW06
	06/25/2005 9:34:49	COMPLETED	COLLECT	3.28	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	06/26/2005 9:26:18	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	06/26/2005 9:48:52	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/26/2005 12:03:25	COMPLETED	COLLECT	2.92	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	06/26/2005 12:15:34	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-06-KCW05
	06/26/2005 12:24:08	COMPLETED	COLLECT	6.78	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/26/2005 13:40:44	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/26/2005 13:50:33	COMPLETED	COLLECT	2.03	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/26/2005 15:11:08	COMPLETED	COLLECT	12.50	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/26/2005 18:35:27	COMPLETED	COLLECT	5.20	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-11-KCW05
	06/27/2005 12:55:20	COMPLETED	COLLECT	1.77	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-15-KCW05
	06/28/2005 12:56:31	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/28/2005 13:20:18	REFUSED	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	06/28/2005 13:22:36	COMPLETED	COLLECT	9.53	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/28/2005 13:37:42	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	06/28/2005 13:40:20	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	06/28/2005 13:44:27	COMPLETED	COLLECT	5.70	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	06/29/2005 15:14:41	COMPLETED	COLLECT	3.32	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	06/30/2005 13:13:29	COMPLETED	COLLECT	12.42	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	07/01/2005 12:57:22	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-06-KCW06
	07/01/2005 13:05:18	COMPLETED	COLLECT	12.93	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-07-KCW06
	07/01/2005 15:15:08	COMPLETED	COLLECT	7.42	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-15-KCW06
	07/02/2005 12:04:37	COMPLETED	COLLECT	3.22	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-11-KCW05

Ex 31

Inmate ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
	07/03/2005 12:05:05	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
	07/03/2005 12:35:22	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	07/03/2005 13:27:25	COMPLETED	COLLECT	2.10	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/04/2005 12:28:05	COMPLETED	COLLECT	1.85	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-02-KCW05
	07/04/2005 12:41:32	COMPLETED	COLLECT	3.42	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
	07/04/2005 12:56:26	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H3-KCW05	Trunk-01-KCW05
	07/04/2005 12:59:08	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	07/04/2005 13:08:37	COMPLETED	COLLECT	10.05	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	07/05/2005 12:04:55	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-13-KCW05
	07/05/2005 13:08:36	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/05/2005 13:30:56	NO ANSWER	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	07/05/2005 15:06:25	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
Ex 25, Call 1	07/05/2005 15:07:23	COMPLETED	COLLECT	10.75	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	07/06/2005 15:19:15	INCOMPLETE	ADMIN	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	07/06/2005 15:45:16	INCOMPLETE	ADMIN	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
Ex 25, Call 2	07/07/2005 13:39:14	COMPLETED	COLLECT	10.90	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	07/08/2005 12:10:13	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-11-KCW05
	07/08/2005 13:32:54	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-05-KCW06
	07/08/2005 15:03:41	COMPLETED	COLLECT	11.87	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/09/2005 16:19:49	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	07/10/2005 9:03:31	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05.	Trunk-03-KCW05
	07/10/2005 9:04:13	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/10/2005 9:05:01	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-02-KCW06
Ex 25, Call 4	07/10/2005 9:38:06	COMPLETED	COLLECT	14.38	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	07/11/2005 15:00:21	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	07/11/2005 15:01:18	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	07/11/2005 15:57:06	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H1-KCW05	Trunk-08-KCW05
	07/12/2005 12:31:50	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/12/2005 13:44:50	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05.	Trunk-06-KCW05
	07/12/2005 15:08:53	SILENCE DETECT	COLLECT	2.65	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/12/2005 15:11:49	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05

Ex 33

Inmate ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
Ex 25, Call 6	07/12/2005 15:13:38	COMPLETED	COLLECT	7.03	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-06-KCW05
	07/13/2005 9:44:52	COMPLETED	COLLECT	6.08	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
	07/13/2005 15:13:27	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H2-KCW06	Trunk-11-KCW06
	07/13/2005 15:22:25	COMPLETED	COLLECT	6.40	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/13/2005 15:38:13	COMPLETED	COLLECT	3.15	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-10-KCW05
	07/14/2005 13:05:16	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/14/2005 13:42:36	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/14/2005 15:11:13	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	07/14/2005 15:20:46	COMPLETED	COLLECT	7.53	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/15/2005 9:41:01	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/15/2005 12:54:16	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-01-KCW05
	07/15/2005 15:10:38	COMPLETED	COLLECT	4.08	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-03-KCW05
	07/16/2005 18:05:56	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-05-KCW06
Ex 26, Call 5	07/17/2005 9:24:45	COMPLETED	COLLECT	2.93	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
	07/17/2005 12:01:55	REFUSED	COLLECT	0.00	0	2063284413	KCW06	RJC-H8-KCW06	Trunk-13-KCW06
	07/17/2005 12:04:11	COMPLETED	COLLECT	3.27	0	2063284413	KCW06	RJC-H8-KCW06	Trunk-04-KCW06
	07/17/2005 12:11:40	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
Ex 26, Call 7	07/17/2005 12:15:15	COMPLETED	COLLECT	4.55	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-21-KCW06
	07/18/2005 15:15:41	COMPLETED	COLLECT	14.40	0	2063284413	KCW05	RJC-H2-KCW06	Trunk-06-KCW05
	07/19/2005 9:23:33	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H7-KCW05	Trunk-00-KCW05
	07/19/2005 10:12:06	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-02-KCW06
	07/19/2005 12:05:59	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-08-KCW06
	07/19/2005 15:24:32	COMPLETED	COLLECT	7.20	0	2063284413	KCW06	RJC-H4-KCW06	Trunk-03-KCW06
	07/19/2005 15:34:32	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-14-KCW06
	07/19/2005 15:37:46	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-02-KCW06
	07/19/2005 15:38:30	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-11-KCW05
	07/19/2005 15:40:10	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-05-KCW06
	07/19/2005 15:42:53	COMPLETED	COLLECT	3.58	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-08-KCW06
	07/19/2005 16:11:21	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-07-KCW06
	07/19/2005 16:12:14	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-09-KCW06
	07/19/2005 16:13:03	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-07-KCW06
	07/19/2005 16:13:54	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H2-KCW06	Trunk-14-KCW06

te ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk
	07/19/2005 18:08:49	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	07/19/2005 18:09:38	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	07/19/2005 18:14:31	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-08-KCW06
	07/19/2005 18:31:03	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-01-KCW06
	07/19/2005 18:32:41	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	07/19/2005 19:01:16	COMPLETED	COLLECT	6.25	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-00-KCW06
	07/19/2005 19:14:03	COMPLETED	COLLECT	5.52	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-06-KCW06
	07/19/2005 20:38:39	COMPLETED	COLLECT	1.20	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-10-KCW06
	07/20/2005 8:15:04	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-18-KCW05
	07/20/2005 8:16:27	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	07/20/2005 8:45:37	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	07/20/2005 9:01:30	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/20/2005 9:03:04	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-06-KCW05
	07/20/2005 9:19:04	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-04-KCW05
	07/20/2005 9:20:17	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-05-KCW06
	07/20/2005 9:50:48	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-06-KCW06
	07/20/2005 9:53:20	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	07/20/2005 10:12:41	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-00-KCW05
	07/20/2005 10:16:27	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-04-KCW06
	07/20/2005 12:04:06	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	Trunk-03-KCW06
	07/20/2005 12:05:51	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-05-KCW05
	07/20/2005 12:06:35	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-09-KCW05
	07/20/2005 12:12:57	COMPLETED	COLLECT	3.48	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	07/20/2005 12:30:55	COMPLETED	COLLECT	0.37	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-13-KCW05
	07/20/2005 12:45:42	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-11-KCW05
	07/20/2005 12:48:38	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-07-KCW05
	07/20/2005 12:52:23	INCOMPLETE	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	Trunk-12-KCW05
	07/20/2005 12:58:25	COMPLETED	COLLECT	5.98	0	2063284413	KCW06	R.C-H2-KCW06	Trunk-03-KCW06
	07/21/2005 12:01:33	ADMIN BLOCK	COLLECT	0.00	0	2063284413	KCW06	RJC-H2-KCW06	
	07/23/2005 13:29:36	ADMIN BLOCK	COLLECT	0.00	0	2063284413	KCW05	RJC-H3-KCW05	
	07/24/2005 12:56:08	ADMIN BLOCK	COLLECT	0.00	0	2063284413	KCW02	KCCF-03THLDG1-1-KCW02	
							KCW06	RJC-P6-KCW06	

Handwritten annotations:
- Ex 25, Call 1
- Ex 25 Call 2
- Ex 25 Call 3
- Ex 25, Call 4
- Ex 25 Call 5
- Ex 25 call 6
- Ex 34

07/26/2005 11:28:36

Report=Rpt_Call_Records

Inn.. ID	Time of Call	Call Type	Bill Type	Dur.	Access Code	ANI	System	Station	Trunk

Total Calls: 219   Total Minutes: 586.47

Ex 35

07/26/2005 11:28:36   Report=Rpt_Call_Records

APPENDIX B

RCW 9.73.030

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person as defined in RCW 70.85.100, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

APPENDIX C

RCW 9.73.095

(1) RCW 9.73.030 through 9.73.080 and 9.73.260 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2)(a) All personal calls made by offenders shall be made using a calling system approved by the secretary of corrections which is at least as secure as the system it replaces. In approving one or more calling systems, the secretary of corrections shall consider the safety of the public, the ability to reduce telephone fraud, and the ability of offender families to select a low-cost option.

(b) The calls shall be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison offender, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility as provided for by this section. The department shall also adhere to the following procedures and restrictions when intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present:

(a) Unless otherwise provided for in this section, after intercepting or recording any conversation, only the superintendent and his or her designee shall have access to that recording.

(b) The contents of any intercepted and recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(c) All conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly

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operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an offender or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all offenders, residents, and personnel of state correctional facilities that their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

(6) The department shall notify all visitors to state correctional facilities who may enter offender living units, cells, rooms, dormitories, or common spaces where offenders may be present, that their conversations may intercepted, recorded, or divulged in accordance with the provisions of this section. The notice required under this subsection shall be accomplished through a means no less conspicuous than a general posting in a location likely to be seen by visitors entering the facility.
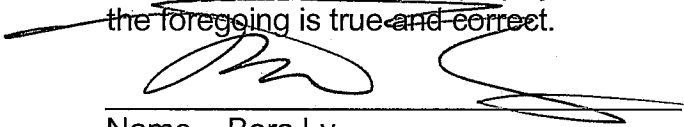
APPENDIX D

RCW 70.48.071.
Standards for operation--Adoption by units of local government

All units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Vanessa Lee, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the State's Supplemental Brief, in <u>STATE V. DESMOND MODICA</u>, Cause No. 797676, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Name   Bora Ly
Done in Seattle, Washington

Date   01-07-08